

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

GREGORY LYNN JOHNSON

CIVIL ACTION NO. 14-3038-P

VERSUS

JUDGE FOOTE

DARREN COWTHORN , ET AL.

MAGISTRATE JUDGE HORNSBY

REPORT AND RECOMMENDATION

In accordance with the standing order of this court, this matter was referred to the undersigned Magistrate Judge for review, report and recommendation.

STATEMENT OF CLAIM

Before the court is a civil rights complaint filed by pro se plaintiff Gregory Lynn Johnson (“Plaintiff”), pursuant to 42 U.S.C. § 1983. This complaint was received and filed in this court on October 14, 2014. Plaintiff is incarcerated at the Caddo Correctional Center in Shreveport, Louisiana. He names Darren Cowthorn and Valador Cowthorn as defendants.

Plaintiff claims that on November 2, 2012, Darren Cowthorn and Valander Cowthorn came to his home to collect \$400.00 he owed Darren Cowthorn for bonding him out of jail. He claims Darren Cowthorn was mad because he did not have the money to pay him. He claims Darren Cowthorn handcuffed him and placed him in his truck to transport him to the jail. He claims that while in transit to the jail, Valador Cowthorn hit him in the head and face. He claims that as a result of the beating, he was bleeding and missing two teeth. He claims the jail refused to accept him. He claims Darren Cowthorn refused to take him to a hospital.

Accordingly, Plaintiff seeks monetary compensation.

LAW AND ANALYSIS

State Actors

Section 1983 prescribes redress for conduct by any person who, under color of state law, acts to deprive another person of any right, privilege, or immunity secured by the Constitution and laws of the United States. See 42 U.S.C. § 1983. A plaintiff in a civil rights suit must show that the conduct of which he is complaining was committed by a person acting under color of state law. Plaintiff has not alleged any action that would give rise to the defendants Darren Cowthorn and Valandor Cowthorn being state actors for purposes of Section 1983.

Accordingly, Plaintiff's civil rights complaint against Darren Cowthorn and Valandor Cowthorn should be dismissed as frivolous.

Prescription

In Wilson v. Garcia, 471 U.S. 261 (1985), the Court articulated the guidelines to be used in determining what prescriptive period should apply to Section 1983 claims. The Court determined "§ 1983 claims are best characterized as personal injury actions" and the forum state's statute of limitations applicable to such claims should be used. Id. at 280. In Gates v. Spinks, 771 F.2d 916 (5th Cir. 1985), the Fifth Circuit Court of Appeals phrased the test as: "The state statute governing the general tort remedy for personal injuries should apply to 1983 actions . . ." Gates, 771 F.2d at 919.

The Louisiana Civil Code provides a general prescriptive statute that governs tort

actions. The article subjects delictual actions to a liberative prescription of one year. See La. C.C. art. 3492. The Fifth Circuit qualified this prescriptive period, however, when it held that "a section 1983 action accrues and the statute of limitations begins to run when the plaintiff knows or has reason to know of the injury which is the basis for the action." Watts v. Graves, 720 F.2d 1416, 1417 (5th Cir. 1983). Finally, prescription on the claim is tolled while the administrative remedy procedure is pending. See Harris v. Hegmann, 198 F.3d 153 (5th Cir. 1999).

Plaintiff claims his civil rights were violated by Defendants on November 2, 2012. Thus, prescription began to run as to these claims in November 2012 at the latest. The above entitled and numbered complaint was not signed by Plaintiff until October 9, 2014, and it was not filed by the Clerk of Court until October 14, 2014. Plaintiff's claims are therefore prescribed.

Accordingly, Plaintiff's civil rights complaint should be dismissed as frivolous.

CONCLUSION

Because Plaintiff filed this proceeding in forma pauperis ("IFP"), if this court finds Plaintiff's complaint to be frivolous, it may dismiss the complaint as such at any time, before or after service of process, and before or after answers have been filed. See 28 U.S.C. § 1915(e); Green v. McKaskle, 788 F.2d 1116, 1119 (5th Cir. 1986); Spears v. McCotter, 766 F.2d 179, 181 (5th Cir. 1985). District courts are vested with extremely broad discretion in making a determination of whether an IFP proceeding is frivolous and may dismiss a claim as frivolous if the IFP complaint lacks an arguable basis either in law or in fact. See Hicks

v. Garner, 69 F.3d 22 (5th Cir. 1995); Booker v. Koonce, 2 F.3d 114 (5th Cir. 1993); Neitzke v. Williams, 490 U.S. 319, 109 S.Ct. 1827 (1989).

Accordingly;

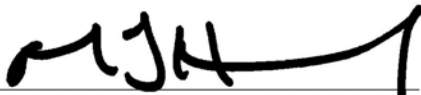
IT IS RECOMMENDED that Plaintiff's civil rights claims be **DISMISSED WITH PREJUDICE** as frivolous and for failure to state a claim upon which relief may be granted.

OBJECTIONS

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), parties aggrieved by this recommendation have fourteen (14) days from service of this Report and Recommendation to file specific, written objections with the Clerk of Court, unless an extension of time is granted under Fed. R. Civ. P. 6(b). A party may respond to another party's objection within fourteen (14) days after being served with a copy thereof. Counsel are directed to furnish a courtesy copy of any objections or responses to the District Judge at the time of filing.

A party's failure to file written objections to the proposed findings, conclusions and recommendations set forth above, within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking, on appeal, the proposed factual findings and legal conclusions that were accepted by the district court and that were not objected to by the aforementioned party. See Douglas v. U.S.A.A., 79 F.3d 1415 (5th Cir. 1996) (en banc).

THUS DONE AND SIGNED, in chambers, in Shreveport, Louisiana, on this 26th day of June 2015.



Mark L. Hornsby
U.S. Magistrate Judge